

**Zoning Board of Appeals  
Lakeville, Massachusetts  
Minutes of Meeting  
July 10, 2008**

**Members present:**

Donald Foster, Chair; David Curtis, Vice-chair; John Veary, Member; Joseph Beneski, Member; Eric Levitt, Member; John Oliveiri, Jr., Associate Member; Carole Zimmerman, Associate Member

**Regular Meeting:**

Mr. Foster opened the regular meeting at 7:05 p.m. He advised that they did have a couple of issues to discuss before they got into hearings. The first was that they had received the final report from Dave Varga in regards to LeBaron. Mr. Foster said that of the items on the list, Mr. Varga finds that every item on the list has either been concluded to his satisfaction or no longer applies with three small exceptions. The first item addresses a memo from the Fire Chief concerning the turning radius. This letter was included in tonight's package. The second item was that a temporary turn around be provided at the limit of the work for Phase 2 that is acceptable to the Fire Chief. The third item had to do with stop signs. In his opinion, these were all minute items. Mr. Foster said that it was his belief that they did have a green light for a Building Permit and he asked Mr. Iafrate what the status was. Mr. Iafrate responded that he did have a list of items that LeBaron was working on but a permit was almost ready to be issued.

Mr. Foster said the other item they needed to discuss was the letter from Attorney Gay regarding Stagecoach. They are interested in making two modifications to their Comprehensive Permit. The first is to remove the age restriction and the second is to give back the eleventh affordable unit so that the new tally would be 10 and 30 which would still maintain the 25% ratio. Mr. Foster said he believed that at the time when this was done, it was before they knew that LeBaron would be putting in the apartment complex and they had really been looking to build up their count of affordable units. Mr. Foster said that it was his opinion that now with the LeBaron unit approved the second request was not substantial. He then opened up discussion regarding that, noting that the Board had to vote whether they felt the request was substantial or not substantial. If they find the request is not substantial, it could then be granted. If they find the request is substantial, they must then hold a public hearing in order to discuss and get input from the public.

Mr. Curtis felt that the removal of the age restriction was a substantial request and that a hearing should be held so that the public could address any concerns that they may have. Mr. Beneski agreed. Board members also felt that this would have a large impact on the septic system.

Mr. Foster asked members how they felt about giving back the extra affordable unit. After further discussion board members agreed that the request for the reduction of the one affordable unit was not substantial but they considered the issue of the age restriction substantial and a public hearing and further review would be required.

Mr. Curtis then made the motion, seconded by Mr. Veary, to allow the reduction of the affordable units from eleven to ten. The vote was **unanimous for**.

Mr. Beneski made the motion, seconded by Mr. Oliveiri, that the Board had determined that the request to remove the age restriction of 55+ was a substantial change which would require a public hearing. The vote was **unanimous for**.

Mr. Beneski advised that approval from the City of Taunton might also be needed because of the additional amount of water needed. Mr. Abbanato replied that they still had the option of wells. Mr. Beneski said that they would then need plans as well as approvals from the Board of Health. Mr. Curtis said that he would also like to review the house plans because they had been approved for over 55.

#### **Ieronimo hearing-continued:**

Mr. Foster explained that although the Ieronimo hearing was opened last month, there seemed to be some confusion with it and the Urbansky hearing. Therefore, no business had been done on it. They were, however, ready to start tonight and the goal was to devise a set of restrictions to apply to the business that make business sense as well as sense for the neighbors. They want to try to control the aspects of a business that are a nuisance. Mr. Foster said that the bylaws are concerned with dust, noise, glare, vibration, hazardous materials, etc.

Mr. Urbansky said that there had been an incident at the property last month but they did not know what. The Fire Department had been called and they thought that there had been some type of spill but there was nothing in the paper so they are unsure of what actually did happen. Mr. Beneski suggested calling the Fire Department for further information.

Mr. Foster said that he felt that they should look forward now and that they would be concerned with the types of chemicals that might be brought on the property. Atty. Manning, attorney for Mr. Ieronimo, replied that there would be no gasoline or gas products or anything of that nature brought onto the property. Atty. Manning said that they have detailed in their Special Permit application exactly what will be going on at the property to address the concerns of neighbors. He advised that Section 5 detailed the products that were to be sold. There will also be some granite products such as bird baths, benches, etc that will be made available with only the samples on site and deliveries to be made from the Middleboro site. He noted that hours of operation were

also included and represented the maximum operational times although it was anticipated that actual operations would be less.

Atty. Manning said that he understands that deliveries were also a concern but this is not a business that requires repeated deliveries throughout the week. There will be a delivery at the onset of each season and they expected only one per season. Deliveries will be restricted to operational hours only. Atty. Manning said that the only sign at the site will be the existing wooden sign which will be up-lit by two spotlights. These lights will only be on during business hours and only when warranted.

Mrs. Urbansky felt that the sign should say Nursery and not Garden Center but she said that the lighting times would be acceptable. There was a discussion about the sign and the fact that it was put up without a permit. Mr. Foster asked Mr. Ieronimo if he would be willing to change the sign and he suggested that they come back to that issue.

Atty. Manning advised that another major issue is parking. Nelson Grove Road has been posted as a “no parking” zone as well as Old Main Street heading toward the Urbanskys. Mr. Ieronimo has also erected a sign directing his customers to a lot that is on the left as you enter Briarby Lane. His intent is to direct everything away from Nelson Grove Road and to keep it unimpeded for the residents’ to access their property.

Atty. Manning said that in regards to noise, there will be no loudspeakers, no outdoor music, or refrigerated trucks running as in the past. The previous owner had large machinery for landscaping but that also will not be the case. The only equipment that Mr. Ieronimo anticipates having on site is a small bobcat which would be used for mulch pick up. Mr. Foster asked if that type of thing could be done out of the Middleboro site. Atty. Manning said that it would be more convenient for customers if they could get it there. Mr. Foster said that he was thinking that was taking a step away from a farm stand. Mr. Beneski asked what was there before. He did not see a problem with garden type material being sold but in a limited amount. He felt that they could put limitations on certain materials that are utilized in gardening. Mrs. Urbansky was not in favor of that because of the smell and because it had been a problem in the past due to the traffic of trucks and trailers coming in for it.

Mr. Foster said that in his opinion if they restricted the use of the power equipment, they would restrict the amount that could be sold. Atty. Manning said that they would be willing to accept a restriction on the size of the bobcat as well as the amount of the mound of mulch. Mr. Foster wondered if a bobcat was necessary at all. Mr. Beneski noted that some trees or shrubs could not be lifted by hand and some type of machinery might be required. A discussion followed in which it was not decided if mulch should be allowed.

Mr. Oliveiri suggested putting a limitation on the size of the bobcat and limits to the amount of what would be allowed to be stored. Atty. Manning advised that according to 4.1.1 the sale of natural products such as loom, manure, bulbs, and things of that nature are permitted by right. They are offering to restrict something that they actually have a

right to have on the premises so that they can live in harmony with the neighbors in the area. He felt that Mr. Ieronimo should be allowed to do that and instead of eliminating the product, make it reviewable and see if he lives up to what restriction is agreed upon. Mr. Urbansky said that it sounds like they are moving into a commercial operation and the SJC decision was very clear about what can and cannot be sold at a nursery. Atty. Manning replied that approximately three quarters of the use is a permitted use under 4.1.1 under farm, garden, greenhouse, or nursery. They are seeking a Special Permit for those aspects of the business which are not permitted under that section. That is what was discussed at the initial meeting and that is why they are here. Pumpkins, poinsettias, Christmas trees, wreaths, etc are not grown on the premise but are brought in to be sold and that is what they are seeking a Special Permit for a farm stand under five acres. All these other issues that had been discussed tonight are permitted as a matter of right and they are offering restrictions as part of the Special Permit because they are doing it collectively in order to work it out peacefully with everyone. He suggested reviewing this in a year and see how it goes. Mr. Foster asked members what they thought. Ms. Zimmerman and Mr. Veary agreed. Mr. Oliveiri also thought being able to review the whole matter in a year was a good idea.

Mrs. Urbansky asked where they were going to sell the poinsettias from as they were not allowed to do that from the greenhouses. Mr. Foster said that appeared to be a dilemma but he suggested that they put that aside for now. He thought the idea of issuing a Special Permit for a period of one year was an interesting proposal. Discussion returned to the issue of the sign and if it should be required to meet the size allowed for a home occupation. Mrs. Urbansky also felt that it should not say Garden Center. Atty. Manning did not agree. He said to ask Mr. Ieronimo to change the name of his business appeared to be overreaching.

Mr. Foster asked the Board where they stood. They have a request for a Special Permit and the predominant issue seems to be mulch. What do they want to do? It was asked if a Permit could be reviewable or renewable. Mr. Iafrate felt that they should set the guidelines that they wanted to go by and that would work. Mr. Levitt said that although they have been talking a lot about mulch maybe that was not the only issue. He did not feel that they should vote on anything tonight but that they needed additional answers to these other questions. Atty. Manning asked what questions he was referring to. Mr. Levitt replied the size of the equipment, the amount of the equipment, the type of materials there, the amount of materials there, what the lighting is go to be and everything else that they have touched upon tonight. They need to make it clear exactly what is going to be done there.

Mr. Foster noted that Mr. Ieronimo and his attorney have made an innovative offer to try this for a year. He felt that was a good time frame to see if this would work. He asked the Urbanskys what they thought. Mrs. Urbansky felt that they would like to come back in a couple of months so that they could discuss this matter again. They did not want to have it voted on tonight but would rather see everything down in writing first. Mr. Foster agreed that they did need to get some more specifics but that Mr. Ieronimo had made a start in the right direction.

Mr. Foster told Mr. Ieronimo that he would have to do some research and see what type and size of bobcat that he wanted to buy so that the Board would know those details as Mr. Levitt had requested. Atty. Manning said that to do an exclusive list of what will and will not be sold at the site would be impossible. He has tried to be as detailed as possible in the application but was unsure of what further detail the Board wanted. Mr. Levitt replied that the amount and size of the equipment, the types of material and the amount of that material, and lighting in the yard. Atty. Manning said that the lighting was addressed with the sign and the only other lighting would be if they string lights with the Christmas trees for the safety of the public. They do not know exactly where that would go but it would be reasonable. Atty. Manning said that it would not be permanent lighting. He said that it appears that they are starting to overanalyze this. He felt the suggestions such as a one bucket loader, twenty yards, and a limit of two yards per customer were great and they accept them but he did not know what additional detail he could give them. He asked that these restrictions be outlined in detail and they can come back in a year and see how it goes instead of coming back every two or three months and debating the same issues.

Mr. Urbansky noted that the Supreme Court of Massachusetts had already ruled on this and that the decision details the limitations of exactly what can be done. Atty. Manning replied that the decision had to do with what was permitted by right at a farm or nursery but the bylaws are different in every Town. Although the statute provides some parameters of what they can do, the interpretation of one bylaw cannot be exactly the same.

The size of the bucket to be allowed was also discussed. Mr. Foster suggested that Mr. Ieronimo research this matter so that he could find out what would be the smallest size machine that could satisfy his needs. Mr. Foster asked how much fuel would be stored on site for this machine. Mr. Ieronimo said that it would be no more than five gallons. Mr. Foster felt that they should consider a restriction that no more than that would be allowed.

A date to continue to was then discussed. Atty. Manning was unavailable for the August meeting and requested they continue until the September meeting, which was on the 18<sup>th</sup>.

Mr. Curtis then made the motion, seconded by Mr. Levitt, to continue the Ieronimo hearing until September 18, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 9:00

#### **Urbansky hearing–continued:**

Mr. Foster opened the Urbansky hearing at 9:00. He asked the Urbanskys if they would like to continue their hearing also. They agreed that they would like to continue until the September hearing as well.

Mr. Curtis then made the motion, seconded by Mr. Levitt, to continue the Urbansky hearing until September 18, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 9:00

#### **Allen-Prevette hearing:**

Mr. Foster opened the Allen-Prevette hearing at 9:01 and read aloud the legal ad. Mr. Foster said that he looked through the application and he felt that the drawings submitted were insufficient. Mr. Prevette said that when he started this process, he was told by Mr. Iafrate that the diagram submitted was okay. Mr. Foster asked if the deck was existing and attached to the house. Mr. Prevette replied that was correct. Mr. Foster said that it appeared that the deck had been built without a building permit. Mr. Prevette said that it was a floating deck. Mr. Foster said that a Special Permit from the Board was still required.

Mr. Foster said that because Mr. Prevette lived in a waterfront community on a small lot and he was proposing a three season enclosed porch on a deck that has not been looked at by the Building Inspector, it raises the concern about safety and the suitability of the deck to support the additional structure. It also raises the issue of the three season deck becoming living area and then the living room becoming another bedroom with a future owner.

Mr. Foster read the July 7, 2008 memo from the Board of Selectmen. They could not make a recommendation because the petition was incomplete. They were concerned with the three season porch becoming living space as well as the lot coverage. They also noted that there were no septic records in the Board of Health so a Title V might need to be done.

Mr. Foster asked how many bedrooms there were. Mr. Prevette replied that there were two bedrooms. Mr. Levitt asked if there would be heat. Mr. Prevette said there would not be any heat. Mr. Foster then read the July 3, 2008 letter from the Board of Health. They saw no health issues involved to recommend approval or denial of the petition.

Mr. Beneski asked what room this was adjoined to. Mr. Prevette said that it was the kitchen. Mr. Beneski asked if he would be adding to the deck. Mr. Prevette replied that he would be taking the deck apart and adding to the house. Mr. Iafrate noted some changes that would have to be made before the deck would be structurally sound for the addition.

Mr. Foster asked what Board members thought. All agreed that they needed to see better plans before a decision could be made. Mr. Foster asked Mr. Prevette if he would like to continue until he could come back with a package for the Board. He suggested working with Mr. Iafrate. Mr. Prevette agreed to continue until the September meeting.

Mr. Veary made the motion, seconded by Mr. Curtis, to continue the Allen-Prevette hearing until September 18, 2008. The time would be at 7:15. The **vote** was **unanimous for**.

The hearing closed at 9:22.

**Sakwa hearing:**

Mr. Foster opened the Sakwa hearing at 9:23 and read aloud the legal ad. He read the May 19, 2008 denial letter from the Building Inspector. He then read the July 7, 2008 from the Board of Health who had no reason to recommend denial of the petition as they had approved the removal of the old septic tank and pump chamber and replacement of a new tank and pump chamber. The July 7, 2008 letter from the Board of Selectmen said that the new structure was not within the setbacks and the petitioner needed to request a Variance and not a Special Permit.

Mr. Foster asked how large the property was. Mr. Castignetti of Long Built Homes said that it was 21,830 feet. After looking at the plans, Mr. Foster felt that the Board of Selectmen had misread the plans, as it appeared that all setbacks were met. Mr. Foster asked if there was a change in the number of bedrooms. Mr. Castignetti replied that they had three bedrooms currently and the proposed house also had three bedrooms.

Mr. Foster asked if the current house was two stories. Mrs. Sakwa said that it was two stories. Mr. Beneski asked if they were putting on a third floor. Mrs. Sakwa said that it was just attic space.

Mr. Foster asked if there were any questions or if anyone present would like to speak for or against the petition. A neighbor who was present said that he was not opposed to the petition. Mr. Curtis questioned if the door to the room marked living room could be removed or widened as it appeared to look like a bedroom. Mr. Foster asked the Sakwas if they would remove the door. Mrs. Sakwa said that she had requested the door but she understood the concern.

Mr. Curtis made the motion, seconded by Mr. Veary, to approve the petition with the following condition:

1. The door to the room marked living room will be removed.

The vote was **unanimous for**.

Mr. Foster then explained the timing of the filings, the appeal period, etc.

The hearing closed at 9:43.

Mr. Veary made the motion, seconded by Mr. Curtis, to adjourn the meeting. The **vote** was **unanimous for**.

Meeting adjourned at 9:44.